

expose the seller to the liability of having the goods forfeited by due process of law." That gives a reasonable meaning of the words. Goods falsely marked are liable to forfeiture in a very intelligible sense. There is an inchoate liability, although the seller may escape conviction, and its consequences, by proving facts which the Act treats as a sufficient excuse.

The learned counsel for the respondents dwelt upon the hardship inflicted on an innocent owner by the forfeiture of valuable goods when the mischief could be remedied so simply by emptying and refilling the boxes which have been seized as contraband. But the hardship, such as it is, is really due to the action of the respondents themselves. They have mistaken their remedy. The case seems to be met by section 267 of the Act of 1882, which provides that whenever any seizure is made for any offence under the Customs Acts the Governor may direct restoration, or may waive proceedings on any terms and conditions he shall think fit. Had an application been made to the Governor, supported by proper evidence, it can hardly be doubted that the goods would have been released on a proper undertaking.

In the result their Lordships will humbly advise His Majesty that the appeal should be allowed, and that the action should be dismissed with costs in the Courts below, to be taxed on the same scale as the costs awarded in the Courts below were directed to be taxed.

The respondents will pay the costs of the appeal.

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No. 34.

(Circular.)

SIR,—

Downing Street, 14th August, 1902.

I have the honour to inform you that my attention has recently been called to the question of the procedure to be adopted with regard to letters of request from foreign tribunals.

2. The following are the general principles which I am advised should be borne in mind: When an application for the taking of evidence is received with respect to a civil or commercial case pending before a foreign tribunal, the matter would not appear to be one in which the colonial authorities should intervene, beyond calling the attention of the Consul, or other person making the application, to the provisions of the Act 19 and 20 Vict., cap. 113, and informing him that he, or some other person duly authorised by the foreign tribunal, should apply directly to the Court for the required evidence to be taken; except where there is a treaty obligation to a contrary effect, the same course should be followed in cases where a criminal matter is pending, as the above-cited Act is extended to criminal cases by section 24 of "The Extradition Act, 1870" (33 and 34 Vict., cap. 52). The expression "criminal matter pending" is understood to mean a matter or proceeding in which a specific charge has been brought against some person or persons of having committed a criminal act, and which is actually pending before a Court or tribunal.

3. The enclosed memorandum quotes the provisions contained in treaties between the United Kingdom and other countries relative to the taking of evidence in criminal matters. In the case of a letter of request emanating from one of these countries, the matter should be taken in hand by the Attorney-General of the colony. The expenses incurred should fall either on the demanding Government (as provided in the case of Russia), or on the Government in whose territory the evidence is taken (as provided in the treaty with the Netherlands.

I have, &c.,

J. CHAMBERLAIN.

The Officer Administering the Government of New Zealand.

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Enclosure.

MEMORANDUM.—PROVISIONS IN EXTRADITION TREATIES RELATIVE TO THE TAKING OF EVIDENCE IN CRIMINAL CASES.

*Luxemburg.—24th November, 1880; Article 2.*

If, in any criminal matter pending in any Court or tribunal of one of the two countries, it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be.

*Monaco.—17th December, 1891; Article 18.*

When, in a criminal case of a non-political character, either of the high contracting parties should think it necessary to take the evidence of witnesses residing in the dominions of the other, or to obtain any other legal evidence, a "Commission Rogatoire" to that effect shall be sent through the channel indicated in Article VIII., and effect shall be given thereto conformably to the laws in force in the place where the evidence is to be taken.