the offence of which the prisoner has been convicted is cognizable in this Court. This motion in arrest of judgment must therefore fail and the prisoner must be brought up for sentence.

Motion dismissed.

Sentence of death was passed, but was afterwards commuted to one of penal servitude for life.

SURAT SING *ats.* THE RECEIVER-GENERAL.

[Appellate Jurisdiction (Berkeley, C.J.) November 6, 1890.]

Customs Ordinance 1881—*ss.* 71,[1] 98[2]—*forfeiture of dutiable goods—whether order for forfeiture should be stated in the conviction.*

In proceedings taken by the Customs authorities under s. 17[1] of the Customs Ordinance, 1881, the Chief Police Magistrate, Suva, adjudged the appellant to pay a fine or in default thereof to be imprisoned for three months, for having certain dutiable goods in his possession on the 7th July, 1890, and had also ordered the forfeiture of the goods to the Crown. From the evidence it appeared that the goods were seized under a search warrant executed at the house occupied by the appellant at Naitasiri.

HELD.—Forfeiture of goods is a legal consequence following on the conviction and it is not competent for an order of foreiture to be made in the same proceeding. It should be a separate proceeding, and an application to forfeit should be made on production of the conviction.

[**EDITORIAL NOTE.**—S. 71 of the Customs Ordinance 1881 was as follows :—

> " It shall be lawful for any Stipendiary Magistrate on sworn information laid by the chief " officer of Customs at any port or by any other officer of Customs deputed by such chief " officer of Customs to issue a search warrant to enable any officer of Customs to enter upon " and search any premises named in such warrant and to enable such officer of Customs to " break open any place box case safe compartment or any receptacle whatever in which any " dutiable goods could be concealed should the owner or occupier of such place or the owner " of such box case safe compartment or other receptacle as aforesaid not open the same " without delay or hindrance to the said officer of Customs, and such officer of Customs may " seize and remove to a Custom House or to a Government bonded warehouse any goods on " which such Customs officer has reasonable grounds for believing that no duty has been paid " or insufficient duty has fraudulently been paid and the person in whose possession any such " goods were found or the occupier of any house or of any premises in or on which any such " goods may be found if the said goods were not found in the possession of any person other " than such occupier and unless such occupier can show that the goods aforesaid were in the " possession of some preson other than himself shall unless it is proved to the satisfaction of " the Stipendiary Magistrate that all duties leviable on such goods have been paid be liable " to a penalty not exceeding two hundred pounds nor less than twenty-five pounds and in " default of payment to imprisonment not exceeding six months nor less than one month and " any such goods as aforesaid shall be forfeited to the Crown." This section is now s. 98 of the Customs Ordinance (Cap. 147) (Revised Edition p. 1522).

S. 98 of the Ordinance of 1881 was as follows :—

> " Any information laid before any Stipendiary Magistrate for any offence committed against " or forfeiture incurred or for the satisfying of any bond or security under this Ordinance may " be in the form and to the effect that the circumstances of each require and no information " summons conviction or warrant or forfeiture shall be held void by reason of any defect therein " and no person shall be entitled to be discharged out of custody on account of such defect

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[1] *Now s. 98 of the Customs Ordinance (Cap. 147) (Revised Edition Vol. II p. 1552).*
[2] *Now s. 145 of the Customs Ordinance (Cap. 147) (Revised Edition Vol. II p. 1540).*

"provided it be alleged in the warrant that the said person has been convicted of an offence "as aforesaid and provided it shall appear to the Court before which such warrant is returned "that such conviction proceeded on good and valid grounds." This section is now s. 145 of the Customs Ordinance (Cap. 147) (Revised Edition page 1540)].

Cases referred to :—

Whitehead v. Reg. [1845] 7 Q.B. 582 ; 14 L.J.M.C. 166.

APPEAL from the decision of the Chief Police Magistrate at Suva.

C. H. H. Irvine, K.C., for the appellant, raised several technical objections against the conviction, the more important ones being that the forfeiture of the goods under s. 71 of Ordinance XVI of 1881[1] was a constituent part of the punishment awarded by the magistrate and, as such, should have been stated in the conviction, on the authority of certain cases quoted in *Paley on Summary Convictions*, and this not having been done the conviction should be quashed. He also submitted that the articles seized should have been specifically set out in the conviction, as otherwise, a fresh prosecution might be taken in respect of the same offence, and upon this ground therefore the conviction was bad in law.

J. S. Udal, for the respondent, contended that the forfeiture of the goods was not such a constituent part of the penalty as would make it come within the decision of the cases mentioned in *Paley*. The forfeiture being specifically decreed by s. 71[1] of the Customs Ordinance 1881, the stipendiary magistrate need only record in the conviction—which was the mere formal drawing up of his decision of judgment—the punishment, as to which he had a discretion, namely, the amount of fine or imprisonment, and could order the forfeiture of the goods apart from the conviction altogether ; and further, that it did not invalidate the conviction because in giving judgment the magistrate might have adjudged the goods to be forfeited. With regard to the objection that the goods should have been specifically mentioned in the conviction, no such danger as that suggested by the appellant could possibly exist, inasmuch as s. 71,[1] which made the mere possession of dutiable goods an offence, ordered such goods, on conviction of the accused, to be forfeited ; and, the magistrate having no discretion in the matter, the Crown forthwith obtained possession of the articles and no further prosecution could, therefore, be undertaken by any one in respect of them.

H. S. BERKELEY, C.J.—The first ground of appeal, viz., that there was not sufficient evidence upon which to convict, I dismiss at once, as I am of opinion that there was sufficient evidence. I come to the same conclusion as to the objection that there was no *mens rea* in what the accused did ; the stipendiary magistrate had all the evidence before him and had every opportunity of judging as to this. Next, as to the technical objection that has been raised, namely, that the conviction did not set out the punishment for the offence of which the accused had been found guilty. As a proposition of law I should hold that whatever formed a constituent part of the punishment inflicted must be contained in the conviction. The question is whether the conviction contained all the punishment the stipendiary magistrate could inflict.

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[1] *Now s. 98 of the Customs Ordinance (Cap. 147) (Revised Edition p. 1522).*

(His Honour referred to *Paley on Summary Convictions* (6th ed., p. 185)[1] and the case of *Whitehead v. The Queen*, there cited.)

The test is whether the stipendiary magistrate has inflicted the punishment authorized by law.

(His Honour referred to s. 71 (2) of Customs Ordinance XVI of 1881.)

There the punishment to be inflicted by the stipendiary magistrate is limited to fine and imprisonment. The forfeiture of the goods is a legal consequence following on the conviction, and I do not think it competent for an order of forfeiture to be made in the same proceeding. It should be a separate proceeding, and an application to forfeit should be made on production of the conviction. The stipendiary magistrate was, therefore, right not to include the forfeiture of the goods in the conviction. As to the objection that the conviction was bad for want of certainty and that the goods should have been mentioned specifically in the conviction, I am of opinion that they ought to have been so mentioned both in the information and in the conviction, but I think that the absence of that is not a sufficient ground for setting aside the conviction. Convictions under the Customs Ordinance 1881 stand on a different footing from ordinary convictions.

(His Honour referred to s. 98 (1) of that Ordinance).

I am of opinion that the conviction is made on good and valid grounds in this case, and that therefore the appeal must be dismissed and with costs.

TOWN BOARD OF SUVA *v.* SMART & COMPANY.

[Civil Jurisdiction (Berkeley, C.J.) May 11, 1891.]

Liability to rates—Seaward boundary of town of Suva—Towns Ordinance 1883, *s.* 57[2]*—Proclamation of 16th November,* 1886, *as to the seaward boundary of the town of Suva—Proclamations of 5th December,* 1884, *and 6th November,* 1889, *as to the seaward boundary of the town of Levuka—High water mark—whether a boundary "along high water mark" remains fixed at the line of high water existing at the date of the Proclamation.*

The Town Board of Suva sued Smart & Co., in the Commissioner's Court for rates on the assessed value for rating purposes of certain land in Suva, described as "Reclamation off Thomson Street".

The case eventually resolved itself into a question as to whether the ground on which the rates in dispute were levied is within the town, so far as the seaward boundary along high-water mark is concerned. The Commissioner reserved his decision, and on May 4th gave his judgment in favour of defendants in the following terms :—

"This is a claim for the sum of £12 10s. 0d., being the amount of rates sought to be levied "on the assessed annual value of a certain piece of land known as the 'Reclamation' "situated to seaward of Thomson Street and owned by the defendants, Smart & Co."

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[1] *Vide 9th Edition p.* 556.
[2] *Rep. Vide Towns Ordinance,* 1935.